IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.439 OF 2006

The Sarpanch Khedgaon Grampanchyat ...Appellant

Vs.

Shriram Dada Mali ...Respondent

Mr.Kishor Patil i/b Mr.P.N.Joshi for the Appellant
Mr.Ramesh Dube Patil i/be M/s.Ajay Misar & Co. for the Respondent.

CORAM: A.S.OKA, J.
DATED: APRIL 24,2006.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the unsuccessful Plaintiff.

2. The case of the Appellant is that there was a grant in respect of the land admeasuring 20R out of Gat No.3 in favour of the Appellant-Plaintiff-Gram Panchyat. There was a well constructed on the said area of 20R for the benefit of the villagers. The Appellant-Plaintiff filed a suit against the respondent for declaration of title and for perpetual injunction. The Trial Court dismissed the suit and the Appeal preferred in the District Court has been dismissed.

3. The learned Advocate for the Appellant submitted that there was no evidence on record to show that the Respondent was in possession of the suit land. He pointed out that in

fact the Appellate Court found that the villagers were drawing water from the well on the disputed portion of land and therefore injunction ought to have been granted in favour of the Appellant by the Courts below. He submitted that user of the well by the villagers was established and therefore, the Appellant being the Gram Panchyat is entitled for injunction.

4. I have considered the submissions. A specific case of the Appellant-Plaintiff was that one Kashiram Sakharam Powar granted the land admeasuring 20 R on the southern side from land bearing Gat No.3 for digging well as there was a shortage of drinking water in the village. The Appellant claimed ownership of the land on the basis of the grant. The Trial Court held that the Appellant has failed to prove the grant. It will be necessary to refer the observation of the Appellate Court in paragraph 11 of its Judgment. The Appellate Court has held that the Appellant has not stated as to how and in what manner the title was acquired by the Appellant to the suit land and to the suit well. Paragraph Nos.14 and 15 of the Judgment of the Appellate Court read thus :

"14. Mr.S.K.Lele, advocate for the appellant, interestingly enough, for the first time in appeal has introduced the theory of irrevocable licence.

However, no pleadings are made in the plaint to suggest so. The theory, which appears to have been made out, is that of grant. However, there is no document to suggest grant. Per contra, the defendant has proved his title and possession over the suit land and the suit well.

15. Mr.Lele then submitted at the bar that the possession of the Plaintiff over the suit land and the suit well is admitted for the water is still being used by the villagers of the Gram Panchayat and, therefore, he submitted that the possession of the trespasser is to be protected against the rightful owner. The defendant has no right to obstruct its possession without the process of law and, therefore, the relief be granted. He further vehemently submitted that the defendant is not at all the owner of the suit property because the original owner Kashiram granted the ownership and possession to the plaintiff long back. At that time, the price of the land was less than Rs.00/- and registration was not at all necessary and, therefore, no document came into existence, but the evidence on record, according to him, establishes the ownership and possession over the suit property.

5. It is therefore obvious that at the time of hearing of the Appeal the case of the Appellant-Plaintiff of ownership by virtue of a grant was given up. As the Appellant has approached the court with a specific case of ownership on the basis of a grant, he will not be entitled to any relief as that case is given up. It is pertinent to note that the suit was filed by the Appellant on the basis of ownership of the well. As ownership is not established, it is obvious that the Appellant cannot succeed. The fact that the villagers are drawing water from the well will not itself establish the title or ownership of the Appellant. If the villagers have any other right, it is for them to establish the said right.

6. Subject to what is stated above, Second Appeal is dismissed with no order as to costs.

Judge.